

## REMARKS

### Summary of Office Action

As an initial matter, Applicants note with appreciation that all claim rejections made in the previous Office Action dated June 25, 2007 have been withdrawn.

Claims 23-31, 35-42 and 47-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,395,262 B1 to Favre et al. (hereafter "FAVRE") in view of Cosmetic Additives (1991) (hereafter "CA").

Claims 32, 33 and 43-45 are rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over FAVRE and CA and in further view of Cosmetic and Toiletry Formulations (1996, 2<sup>nd</sup> ed., Vol. 5) (hereafter "CTF").

Claims 23-34 and 36-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over FAVRE in view of U.S. Patent No. 6,248,338 to Muller et al. (hereafter "MULLER").

### Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the following remarks.

#### *Response to Rejection under 35 U.S.C. § 103(a) over FAVRE in View of CA*

Claims 23-31, 35-42 and 47-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over FAVRE in view of CA. The rejection essentially alleges that Example 5 of FAVRE teaches an oil-in-water emulsion cosmetic formulation comprising components which meet the definition of components (a) to (c) as recited in the present claims and 0.1 % of a non-ionic surfactant, sorbitan monostearate (20) instead of component (d). With respect to component (e) the

rejection further alleges that FAVRE teaches the use of fatty alcohols as co-surfactants.

The rejection concedes that FAVRE does not teach the use of glyceryl stearate citrate and triceteareth-4 phosphate as emulsifiers but asserts that CA teaches that triceteareth-4 phosphate is an “oil-in-water emulsifier that aids fast absorption of the composition into skin”, wherefore it would allegedly have been obvious to one of ordinary skill in the art to modify the oil-in-water emulsion of FAVRE by incorporating therein triceteareth-4 phosphate.

Applicants respectfully traverse this rejection. In particular, it is pointed out that all of the compositions of the Examples of FAVRE which contain both Pemulen TR2 and Carbopol 980 either contain no surfactant at all (see Examples 10 and 11) or contain 0.1 % by weight of oxyethylated sorbitan monostearate, i.e., sorbitan monostearate 20 EO (Examples 5 and 9; see col. 12, lines 66/67 of FAVRE). Further, according to col. 9, lines 1-6 of FAVRE oxyethylated sorbitan monostearate is a co-emulsifier, i.e., does not even qualify as one of the optional (non-ionic) primary emulsifiers which are mentioned in FAVRE in the last paragraph of col. 8. For this reason alone, there is no motivation for one of ordinary skill in the art to replace the non-ionic sorbitan monostearate 20 EO co-emulsifier in the composition of Example 5 of FAVRE by a primary emulsifier, let alone by an anionic primary emulsifier such as triceteareth-4 phosphate. In this regard, it also is pointed out again that FAVRE does not even mention any examples of anionic (primary) emulsifiers.

Applicants note that the only reason which is set forth in the present Office Action as to why one of ordinary skill in the art would allegedly be motivated to replace the nonionic co-emulsifier in the composition of Example 5 of FAVRE by the anionic emulsifier triceteareth-4 phosphate is that CA allegedly discloses that the latter compound aids in the fast absorption of a composition which contains this compound into skin. However, CA does not teach that triceteareth-4 phosphate aids in

the fast absorption of a composition into skin but merely states "Fast absorption into skin". Accordingly, in the absence of any further explanation one of ordinary skill in the art will assume that CA merely indicates that the compound tricetareth-4 phosphate itself is rapidly absorbed into skin.

At any rate, one of ordinary skill in the art will recognize that whether or not a composition is rapidly absorbed into the skin is not only dependent on the emulsifier but also on the remaining components of the composition. For example, in the case of the composition of Example 5 of FAVRE it is apparent that at least the polymeric (and cross-linked) substances Pemulen TR2 and Carbopol 980, the hydroxylated silicone gum and the PDMS-coated pigments will not be absorbed into the skin, wherefore there would be no point in adding a compound which aids in the fast absorption of a composition into skin to the composition of Example 5 of FAVRE.

Applicants further point out that in view of the fact that the composition of Example 5 of FAVRE already contains one of the co-emulsifiers mentioned in col. 9, first paragraph of this document, i.e., an oxyethylenated sorbitan monostearate, there is no apparent reason for one of ordinary skill in the art to add yet another representative of the co-emulsifiers mentioned in the first paragraph of col. 9 of FAVRE, i.e., a fatty alcohol (see component (e) recited in the present independent claims) to this composition.

It is submitted that at least for all of the foregoing reasons and the additional reasons set forth in the response to the previous Office Action, FAVRE in view of CA is unable to render obvious the subject matter of any of the claims of record, wherefore the rejection of claims 23-31, 35-42 and 47-49 under 35 U.S.C. § 103(a) is without merit and should be withdrawn, which action is respectfully requested.

***Response to Rejection under 35 U.S.C. § 103(a) over FAVRE and CA further View of CTF***

Claims 32, 33 and 43-45 are rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over FAVRE and CA and in further view of CTF. The rejection concedes that FAVRE and CA fail to teach the amount by which triceteareth-4 phosphate is used and essentially alleges that CTF cures this deficiency by teaching "that 1 % of triceteareth-4 phosphate is used in an oil-in-water skin milk formulation comprising 0.15 % of Carbopol 980".

Applicants respectfully traverse this rejection as well. Specifically, as has been set forth in detail above, FAVRE in view of CA does not render it obvious to one of ordinary skill in the art to add triceteareth-4 phosphate to a cosmetic composition which comprises Pemulen TR2 and Carbopol 980.

Applicants further point out again that with the exception of the presence of water and Carbomer 980 the skin milk of CTF and the composition of Example 5 of FAVRE have nothing in common. Accordingly, even if one were to assume, *arguendo*, that one of ordinary skill in the art would be motivated to include triceteareth-4 phosphate in the composition of Example 5 of FAVRE, it is not seen why he or she would consult CTF to find out in which concentration triceteareth-4 phosphate should be used.

Applicants respectfully submit that in view of the foregoing, the rejection of claims 32, 33 and 43-45 under 35 U.S.C. § 103(a) over FAVRE and CA and in further view of CTF is without merit, wherefore withdrawal thereof is warranted as well.

***Response to Rejection under 35 U.S.C. § 103(a) over FAVRE in View of MULLER***

Claims 23-34 and 36-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over FAVRE in view of MULLER. The rejection concedes that FAVRE fails to teach

glyceryl stearate citrate. In this regard, the rejection alleges that MULLER teaches starchy cleaning and cosmetic care compositions in the form of O/W emulsions and also teaches that the hydrophobic phase is maintained as fine dispersion by adding co-emulsifiers such as a combination of glycerin monostearate or distearate with glycerin mono- and difatty acid esters. The rejection further points to the compositions of Examples 10-15 of MULLER wherein Axol C 62 (glyceryl stearate citrate) is used. The rejection appears to assert that in view thereof it would have been obvious to one of ordinary skill in the art to add a co-emulsifier such as glyceryl stearate citrate to the composition of Example 5 of FAVRE with the "reasonable expectation of successfully stabilizing the emulsions of FAVRE".

Applicants respectfully traverse this rejection as well. Specifically, FAVRE relates to a (cosmetic) composition which comprises a specific copolymer comprised of monoolefinically unsaturated C<sub>3</sub>-C<sub>6</sub> carboxylic acid monomer and fatty-chain monomeric ester of acrylic acid (see abstract of FAVRE). According to col. 2, lines 17-22 of FAVRE, this copolymer makes it possible to limit, or even eliminate entirely, the transfer and/or migration of the composition and thus makes it possible to improve its staying power. At column 8, lines 53-56 FAVRE further states that when the composition taught therein "is in the form of an emulsion, it may optionally also comprise a surfactant, although this is not necessary in order to obtain a stable and fine emulsion". In the following sentence FAVRE states that the presence of a surfactant makes it possible to refine the emulsion and thereafter gives examples of non-ionic O/W surfactants and also examples of non-ionic co-surfactants which are suitable for this purpose. None of the surfactants is employed in the compositions of the Examples of FAVRE, including those compositions in which both Pemulen TR2 and Carbopol 980 are present (Examples 5 and 9-11). Some of these compositions do contain co-surfactants, but these co-surfactants (sorbitan monostearate 20EO and polyglyceryl decaoleate) are

non-ionic. For these reasons alone, there is no motivation for one of ordinary skill in the art to add an anionic surfactant such as glyceryl stearate citrate to the compositions of FAVRE, the more so because FAVRE makes it clear that surfactants are not needed for stabilizing the compositions taught therein.

At any rate, the compositions of FAVRE and MULLER have virtually nothing in common, wherefore there is no motivation for one of ordinary skill in the art to combine the teachings of these documents. As set forth above, FAVRE relates to a (cosmetic) composition which comprises a specific copolymer comprised of monoolefinically unsaturated C<sub>3</sub>-C<sub>6</sub> carboxylic acid monomer and fatty-chain monomeric ester of acrylic acid, which copolymer improves the staying power of the composition. In comparison, MULLER relates to a composition for cleaning or caring for the skin, teeth or hair or for cleaning smooth surfaces which has an aqueous phase containing a pregelatinized, crosslinked starch selected from a C<sub>2</sub>-C<sub>5</sub> hydroxyalkyl starch and a C<sub>2</sub>-C<sub>18</sub> acyl starch, which starch acts as a stability improver, as a viscosity regulator, as a (co)emulsifier, as a skin feel improving agent and as an agent for improving hairdressing characteristics (see abstract of MULLER).

Further, with respect to the glyceryl stearate citrate (Axol C62) which is employed in Examples 10-15 of MULLER relied on in the present rejection, it is pointed out that in these Examples glyceryl stearate citrate is invariably employed in a concentration of 3.00 % by weight and in combination with a significant amount (at least 0.50 % by weight) of an additional surfactant (Prisorine 3700 = polyglyceryl-3 diisostearate or Tegin 90 = glyceryl stearate). Also in the numerous other Examples of MULLER wherein Axol C62 is employed this surfactant is employed in a concentration of at least 2 % by weight and always in combination with a significant amount of an additional surfactant. In comparison, in all of the Examples of FAVRE in which a surfactant is employed at all the surfactant is employed in a concentration of not higher than 1.1 % by weight

(and in Examples 5 and 9 which employ both Pemulen TR2 and Carbopol 980 in a concentration of only 0.1 % by weight) and without the presence of any additional emulsifier. This is yet another difference between the teachings of FAVRE and MULLER which provides a disincentive rather than a motivation to combine the teachings of these documents.

Applicants submit that at least for all of the foregoing reasons, FAVRE in view of MULLER fails to render obvious the subject matter of any of the claims of record. Accordingly, the rejection of claims 23-34 and 36-49 under 35 U.S.C. § 103(a) over FAVRE in view of MULLER is without merit and withdrawal thereof is respectfully requested.

### CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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